IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 172 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

BHARAT VIJAY MILLS LTD.

Appearance:

1. INCOME TAX REFERENCE No. 172 of 1989
MRS MAUNA BHATT, for Petitioner No. 1
MR MJ SHAH for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 03/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following questions are referred for our opinion in

respect of the assessment year 1980-81 :-

1. Whether, the assessee is entitled in law to the allowance of Rs.52,000/- being deferred annuity premium paid in respect of two managing directors of the assessee?

2. Whether, the assessee is entitled in law to the allowance of Rs.44,000/- being the expenses incurred on issue of bonus shares ?

2. Heard Mrs Mauna Bhatt, learned standing counsel for the applicant-revenue and Mr MJ Shah, learned counsel for the respondent-assessee.

3. Our attention is invited to the decision of this Court in Gujarat Steel Tubes Ltd. vs. CIT, (1994) 210 ITR 358 wherein this Court had an occasion to consider several questions including the above referred two questions.

In respect of the premium on deferred annuity on the lives of the Directors, this Court held that where the ownership of the policy is with the Company, the Company has the discretion to pay amounts and, therefore, the premium paid on such deferred annuities in not deductible.

Following the aforesaid decision, our answer to question No.1 is in the negative i.e. in favour of the revenue and against the assessee.

4. Coming to question No. 2, in the aforesaid decision this Court also considered the question of bonus shares and held that the expenditure on issue of bonus shares is capital in nature.

Following the aforesaid decision, our answer to question No. 2 is also in the negative i.e. in favour of the revenue and against the assessee.

5. The reference accordingly stands disposed of with no order as to costs.

(M.S. Shah, J.) (K.A. Puj, J.)

sundar/-